



Town Council Agenda Report

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN THE FIFTH AMENDMENT TO THE NOVEMBER 25, 1986 INTERLOCAL AGREEMENT BY AND BETWEEN BROWARD COUNTY, THE TOWN OF DAVIE AND THE OTHER MUNICIPALITIES WHO ARE PARTY TO THE AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF:

This Resolution amends section 3.3 of the Interlocal Agreement between Broward County and the Town of Davie for Solid Waste Disposal Services regarding "flow control", to **exclude** any solid waste designated for out of state disposal.

DISCUSSION: (include background, project summary, significant impacts, citizen participation, workload impacts, purpose, project workscope, evaluation and selection process, and conclusion)

In 1987, Broward County and twenty-four cities (known as the Contract Communities or Partner Cities), including the Town of Davie, entered into an Interlocal Agreement which authorized local governments to enact "Flow Control" Ordinances to ensure that the Resource Recovery System received an adequate quantity of solid waste. In 1994, the Supreme Court decided the case of C & A Carbone, Inc. vs. Town of Clarkstown which held that a local flow control ordinance that required all local waste to be processed at a single designated facility effectively prohibited the export of waste beyond state lines, and therefore it discriminated against the Interstate Commerce Act, violating the Commerce Clause of the US Constitution. As a result of the Carbone Decision, Coastal Carting, Inc. sued Broward County and its Contract Communities. On May 5, 1999, the Broward County Courts found that summary judgment was appropriate and should be entered against all Defendants, finding that the Broward County Ordinance was unconstitutional under the Commerce Clause of the US Constitution.

As a result of the Coastal Carting Lawsuit, the Interlocal Agreement with Broward County for Solid Waste Services was amended on May 21, 1999, by the Fifth Amendment. The intent of this Amendment is require the parties of the Interlocal Agreement to conform to the case law regarding flow control and to remove any restrictions regarding any solid waste generated in Broward County destined for disposal outside of the State of Florida, making it consistent with flow control ordinances of other jurisdictions

CONCURRENCES: (concerns and/or opinions of affected departments, Committees, Boards or Council)
N/A

FISCAL IMPACT:
N/A

RECOMMENDATION(S):
Passage of Resolution

Attachment(s):
Resolution, Copy of the Fifth Amendment to the Interlocal Agreement with Broward County for Solid Waste Disposal Services, Exhibit C (Waste Flow Control Ordinance)

RESOLUTION NO. R-99-

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN THE FIFTH AMENDMENT TO THE NOVEMBER 25, 1986 INTERLOCAL AGREEMENT BY AND BETWEEN BROWARD COUNTY, THE TOWN OF DAVIE AND THE OTHER MUNICIPALITIES WHO ARE PARTY TO THE AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie entered into an Interlocal Agreement with Broward County and other municipalities who are party to the agreement for Solid Waste Disposal Services dated for convenience November 25, 1986; and

WHEREAS, the Interlocal Agreement has been subsequently amended by the County and various municipal parties; and

WHEREAS, Broward County has requested that the Town enter into a document entitled "Fifth Amendment" to the Interlocal Agreement so as to update and revise the Interlocal Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie hereby authorizes the Mayor to execute on behalf of the Town the "Fifth Amendment" to the Interlocal Agreement by and between Broward County, the Town of Davie and the other municipalities who are party to the agreement for Solid Waste Disposal Services, a copy of which is attached hereto as Exhibit "A".

SECTION 2. The appropriate Town officials are authorized to take all necessary actions to implement the Agreement.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 1999.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 1999.

FIFTH AMENDMENT

This Fifth Amendment dated for convenience May 21, 1999, to the Interlocal Agreement with Broward County for Solid Waste Disposal Services ("Interlocal Agreement"), dated for convenience November 25, 1986, by and between Broward County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, ("COUNTY") and the Municipalities who are parties to the Interlocal Agreement ("CONTRACT COMMUNITIES").

WITNESSETH

WHEREAS, the Interlocal Agreement was entered into, in part, based upon enabling legislation contained in Section 403.713, Florida Statutes, which specifically authorizes local governments to enact "flow control" ordinances to ensure that the Resource Recovery System receives an adequate quantity of solid waste. In reliance on this law, the County and twenty four Contract Communities within the County agreed to enact a waste flow control ordinance; and

WHEREAS, in 1994, the U.S. Supreme Court decided the case of C & A Carbone, Inc. v. Town of Clarkstown, which held that a local flow control ordinance that required all local waste to be processed at a single designated facility effectively prohibited export of waste beyond state lines without the initial local processing, thereby discriminating against interstate commerce and was, therefore, a violation of the Commerce Clause of the U.S. Constitution; and

WHEREAS, as a result of the Carbone legal decision and other similar decisions which have followed, including the most recent ruling in the case of Coastal Carting, Ltd, Inc. v. Broward County, Florida, et. al., the ordinances of the County and the partner Cities must be amended, in order to exclude solid waste destined for out of state disposal. It is the intent of this amendment to require the parties to the Interlocal Agreement to conform the laws and rules governing the Broward Solid Waste Disposal District to the case law regarding flow control and to remove all barriers, restriction, impediments and regulations of whatever nature from any solid waste generated in Broward County which is destined for disposal outside of the State of Florida, consistent with the flow control ordinances of other jurisdictions which have withstood constitutional scrutiny by providing this exclusion.

NOW, THEREFORE, the parties do agree to amend the Interlocal Agreement as follows:

1. Except as may be provided in this Fifth Amendment, all defined terms used herein shall have the meanings ascribed to them in the Interlocal Agreement.

2. Article 3, Section 3.3 shall be amended as follows:

- 3.3 Each CONTRACT COMMUNITY and COUNTY for the unincorporated area agrees to enact prior to March 31, 1987, a waste flow control ordinance as set forth in Section 403.713, Florida Statutes (as may be amended from time to time), directing that all solid waste generated within their respective geographic boundaries be delivered to the resource recovery system transfer or disposal facility or facilities designated in the plan of operations. The solid waste flow control ordinance shall be substantially in the form of Exhibit C attached hereto and made a part hereof. Each party agrees to include in any contract or contract amendments with haulers executed after the date of execution hereof. a provision

that all solid waste shall be delivered to the resource recovery system transfer or disposal facility or facilities designated in the plan of operations and to enforce such provision, with the exception of waste generated in Broward County which is shown to be destined for transportation to any destination outside of the State of Florida. The COUNTY shall be a third party beneficiary of such provision.

3. Except as modified herein, the Interlocal Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, SIGNING BY AND THROUGH ITS Chair or Vice Chair, authorized to execute the same by Board action of the ____ day of _____, 1999, and by the CONTRACT COMMUNITIES signing by and through official(s) duly authorized to execute the same.

COUNTY

ATTEST: BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida
By _____
Chair
_____, 1999

Approved as to form by Office of the County Attorney
115 South Andrews Avenue, Fort Lauderdale, Florida 33301

By _____
Noel M. Pfeffer, Deputy County Attorney

FIFTH AMENDMENT TO INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR
SOLID WASTE DISPOSAL SERVICE

CONTRACT COMMUNITY

WITNESS _____
Name of Contract Community

By _____
_____, 1999

ATTEST:

Approved as to form:

City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING ORDINANCE NO. 87-36 OF THE TOWN OF DAVIE BY AMENDING SECTION 3 THEREOF ENTITLED "WASTE FLOW CONTROL"; CREATING AN EXCLUSION FROM FLOW CONTROL RESTRICTIONS FOR SOLID WASTE GENERATED WITHIN THE TOWN OF DAVIE WHICH IS SHOWN TO BE DESTINED FOR TRANSPORTATION TO ANY DESTINATION OUTSIDE THE STATE OF FLORIDA; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 87-36 was adopted by the Town of Davie, pursuant to Section 3.3 of the November 25, 1986, Interlocal Agreement by and between Broward County and various municipalities including the Town of Davie (hereinafter the "Interlocal Agreement"), to provide for the delivery of solid waste generated within the Town to the Resource Recovery System described within Ordinance No. 87-36 and the Interlocal Agreement; and

WHEREAS, since the adoption of Ordinance No. 87-36, decisions by various courts regarding the delivery of solid waste suggest that Ordinance No. 87-36 should be updated and revised; and

WHEREAS, consistent with the Town's obligations pursuant to the Interlocal Agreement, the Town is amending Ordinance No. 87-36 to exclude solid waste destined for transportation to locations outside of the State of Florida from the provisions of the Town's Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The "Whereas" clauses set forth in the preamble of this Ordinance are hereby approved and confirmed.

SECTION 2. That Section 3 of Ordinance No. 87-36 is hereby amended to read as follows:

Section 3. Waste Flow Control.

(a) It is the purpose of this Article to require all inhabitants and persons within the Town of Davie, Florida, to use exclusively the Resource Recovery System identified in the Interlocal Agreement for the disposal of all solid waste generated within the Town of Davie for the purpose of insuring that the Resource Recovery System receives an adequate quantity of solid waste from solid waste generated within its boundaries.

(b) The Town of Davie, Florida, hereby directs that all solid waste generated within its geographic boundaries be delivered to the resource recovery system transfer or disposal facility or facilities designated in the plan of operation under the Interlocal Agreement and

further hereby relinquishes all title and interest in solid waste collected or generated within its geographical boundaries upon delivery of such solid waste to the resource recovery system transfer or disposal facility or facilities designated in said plan of operations.

(c) The Town of Davie, Florida, will conform the terms and conditions of any agreement that it may have with a hauler of solid waste to the terms and conditions of the Interlocal Agreement.

(d) Nothing herein is intended to either discourage or prohibit either voluntary or locally ordained solid waste segregation programs segregating scrap or new or used materials at the point of generation and held for purposes of recycling.

(e) Waste generated in the Town of Davie, Florida, which is shown to be destined for transportation to any destination outside of the State of Florida based upon a sworn affidavit of a hauler delivered to the Town of Davie reciting facts which evidence the transportation and disposal of waste outside the State of Florida is excluded from the flow control restrictions contained herein.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4 If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 1999.

PASSED ON SECOND READING THIS ____ DAY OF _____, 1999.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 1999.